

NEPA Guide



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The national environmental commitment

President Bill Clinton, speaking on Earth Day, 1993:

The bounty of nature is not ours to waste, it is a gift from God that we hold in trust for future generations . . .

Our [national] environmental program is based on three principles . . . :

- *[We] can't have a healthy economy without a healthy environment.*
- *We want to protect the environment at home and abroad . . . We share our atmosphere, our planet, our destiny with all the people of this world . . .*
- *We must move beyond the antagonisms among business, government, and individual citizens . . . We need a government . . . to bring out the best in us . . . I ask all federal facilities to . . . reduce toxic releases, control costs associated with cleanups, and promote clean technologies . . . Our government should be a positive example for the rest of the country.*

I ask that all of us today reaffirm our willingness to assume responsibility for our common environment, and to do it willingly, hopefully, and joyously . . . [and] to protect our environment, from our largest cities to our smallest towns to our suburbs. The challenge [is] to shoulder responsibility and seize opportunity . . . Each of us has something to offer to the work of cleaning up America's environment. And each of us surely has something very personal to gain.

The best way to clean up the environment is to prevent environmental deterioration in the first place . . . we believe that by moving our focus upstream, by emphasizing innovation and source reduction measures . . . we can blaze a new trail of lower environmental costs [and] improved environmental protection and public health . . . we must now build environmental protection into everything we do . . .

—Carol Browner
EPA Administrator
Earth Day, 1993



DEPARTMENT OF DEFENSE
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GST

August 2, 1993

MEMORANDUM FOR DISTRIBUTION

SUBJECT: Ballistic Missile Defense Organization Environmental Awareness

Environmental awareness is at an all time high. The Federal Government is committed to stewardship of the Earth's environment. The Department of Defense has taken the lead in the commitment to environmental compliance and protection. The Ballistic Missile Defense Organization (BMDO) will meet this challenge as we carry out our assigned mission.

Our research, development, and testing mission activities are varied and need to be assessed for potential environmental impacts. To accomplish the BMDO mission and be good stewards of the environment, we must understand what is involved in the practice of environmental stewardship.

To assist this effort, this BMDO NEPA Application Guide provides information on how to comply with the letter and spirit of the National Environmental Policy Act. NEPA establishes national environmental policy and goals for the protection, maintenance, and enhancement of the environment. It also provides procedures for implementing these goals within federal agencies. I invite every member of the BMDO, our Executing Agents, and associated contractors to read and understand this guide. Refer to it often and be environmentally aware.

MALCOLM R. O'NEILL
Major General, USA
Director (Acting)

Introduction

The Purpose of this Guide

The purpose of this guide is to provide the Ballistic Missile Defense Organization (BMDO) managers and executing agents with an overview of the National Environmental Policy Act (NEPA) process, thus allowing BMDO to comply effectively with NEPA. This guide will help Program Managers and Project Integrators to comply effectively with NEPA in accomplishing the BMDO mission.

What is NEPA?

NEPA became law on January 1, 1970. The Act established national environmental policy and goals for the protection, maintenance, and enhancement of the environment, and it provided a process for implementing these goals within federal agencies. The Act also established the President's Council on Environmental Quality (CEQ), whose primary role is oversight of NEPA compliance. The CEQ published *Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act* (Title 40, Code of Federal Regulations, parts 1500-1508).

What are NEPA requirements?

Environmental considerations are an integral part of BMDO planning and decisionmaking.

NEPA requires all federal agencies to integrate environmental considerations with their planning and decisionmaking through a systematic interdisciplinary approach.

Federal agencies must prepare detailed statements assessing the environmental impacts of “major federal actions significantly affecting” the human environment. These detailed statements, referred to as Environmental Impact Statements (EISs), must also evaluate the environmental impacts of reasonable alternatives to the proposed action, including the no-action alternative. However, an EIS need not be prepared for every action. Less detailed analysis can adequately support minor actions or major actions that do not significantly affect the human environment.

BMDO NEPA compliance

NEPA analysis and the resulting documents are intended to assist federal decisionmakers in understanding the environmental consequences of their decisions. Adverse impacts need not preclude BMDO from taking actions required to accomplish its mission.

NEPA requires an evaluation of the environmental effects of a proposed action, including its alternatives. Depending on whether or not an undertaking could significantly affect the environment, one of three levels of NEPA analysis and documentation is required:

- A Categorical Exclusion (CATEX), documented in a Record of Environmental Consideration (REC)
- An Environmental Assessment (EA)
- An Environmental Impact Statement (EIS)

The purpose of NEPA is not extensive analysis or increased paperwork; it is to foster informed decisionmaking.

**“NEPA'S PURPOSE IS NOT TO GENERATE PAPERWORK—
EVEN EXCELLENT PAPERWORK— BUT TO FOSTER
EXCELLENT ACTION.”**

—CEQ REGS

Federal actions requiring NEPA analysis

***Environmental compliance:
A part of doing business.***

All federal decisions and actions are potentially subject to NEPA analysis and documentation. In general, NEPA applies when a proposed action requires federal funds, uses federal employees, affects federal land, or requires a federal-level decision. The more significant the proposed action, the greater the likelihood that more detailed analysis and documentation may be required.

According to the Council on Environmental Quality Regulations (Section 1508.18), the following actions and decisions fall under the heading of “major Federal actions” and potentially must be analyzed under NEPA:

- Any action “with effects that may be major and which are potentially subject to Federal control and responsibility.”
- “Actions [and alternatives with] . . . new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies; [with] new or revised agency rules, regulations, plans, policies, or procedures; and [with] legislative proposals.”
- “Adoption of . . . formal documents establishing an agency's policies which will result in or substantially alter agency programs.”
- “Adoption of formal plans . . . which guide or prescribe alternative uses of federal resources, upon which future agency actions will be based.”
- “Adoptions of programs, such as a group of actions to implement a specific policy or plan . . .”
- “Approval of specific projects, such as construction or management activities located in a defined geographic area.”

BMDO actions requiring NEPA analysis

- Major Defense Acquisition Program (MDAP) milestone decisions as outlined in DoD Dir. 5000.1 and DoD Inst. 5000.2
- System development operations and support
- Production and deployment of a system
- Decommissioning of a system
- Missile launches
- Construction activities
- Technology live-fire testing
- Laboratory activities above and beyond the ordinary or routine
- Activities that use hazardous material and may result in production of hazardous waste
- Site-wide analysis at a particular location—for example, U.S. Army Kwajalein Atoll and White Sands Missile Range activities

What to do for NEPA compliance

Successful NEPA compliance, as well as compliance with other federal and state environmental laws and DoD regulations, depends on the following actions:

- **Starting early.** NEPA analysis should begin at the earliest stages of the planning process; continue through BMDO system acquisition, deployment, and operation; and conclude when the system is decommissioned and scrapped.
- **Involving Congress, other agencies, and the public.** During scoping and consultation, view each of these groups as partners in achieving the BMDO mission. As partners, they should never be surprised by what BMDO wants to do or eventually does.
- **Exploring all reasonable alternatives.** Without a range of sound alternatives, neither the public nor the decisionmaker can compare the environmental effects of a proposed program.
- **Identifying all potential effects.** Silence about a possible problem can be a program stopper. Potential effects include all effects on physical and biological resources. These effects may have secondary effects on social and economic resources, which then become part of a NEPA analysis.
- **Being honest.** Incomplete or unavailable data are inevitable in any program. Honestly disclose gaps in data. The courts don't expect perfection; they do expect good faith and honesty.

These rules will lead to legally sound and defensible NEPA documents.

NEPA documents and procedures

The required NEPA documents must be integrated with BMDO project planning. The primary legal requirement is that NEPA analysis and the accompanying documents be completed **before** BMDO commits resources to tests, prototypes, systems acquisition, and deployment.

Environmental considerations are part of every BMDO project.

The scope of the proposed action and the potential significance of the effects dictate which one of the three following levels of NEPA analysis and documents is required:

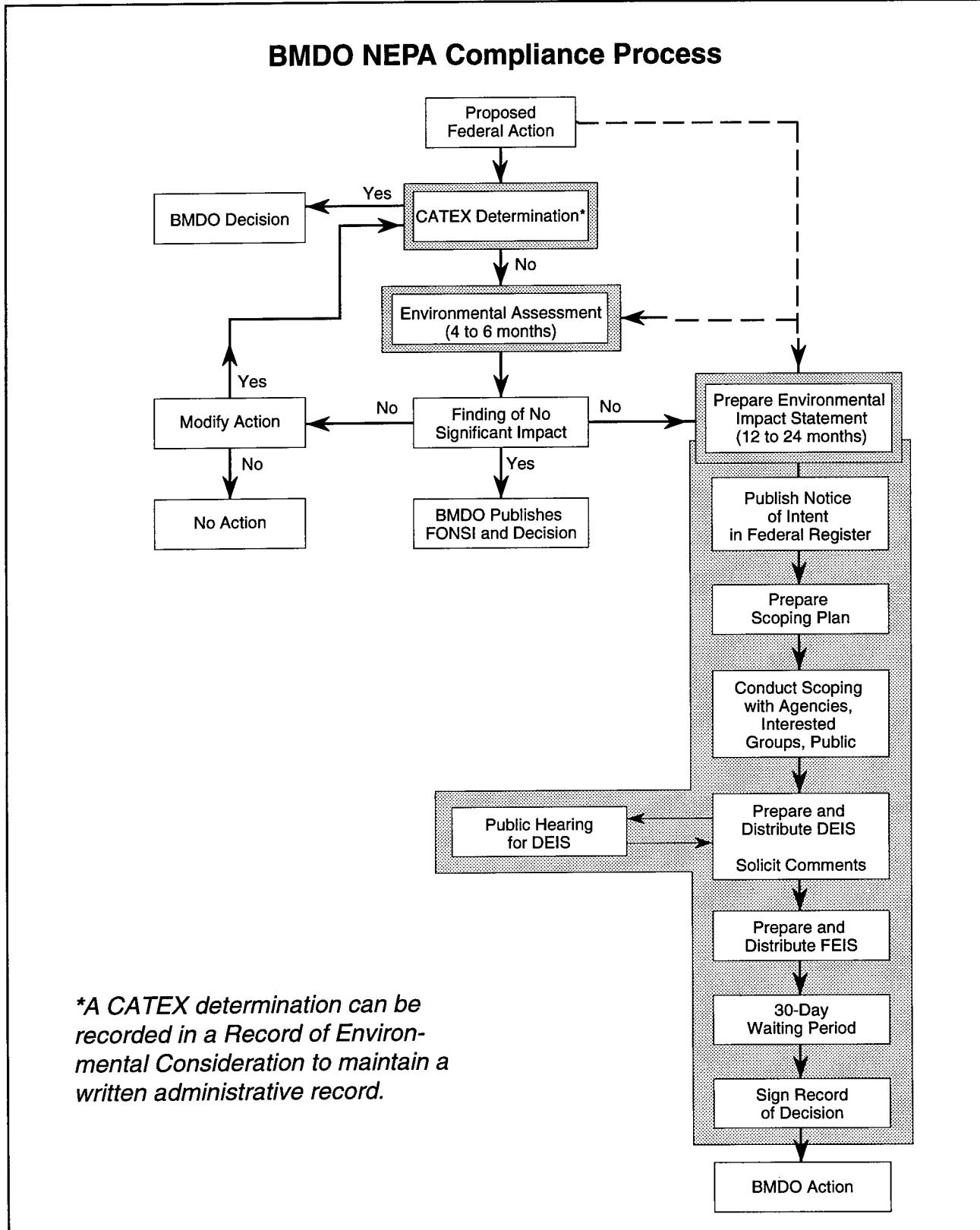
- **Categorical Exclusion (CATEX).** A CATEX applies to categories of BMDO actions that have previously been determined not to “have a significant effect on the human environment.” A CATEX does not require an EA or an EIS. Some CATEXs require no documentation; others may require minimal internal documentation such as a **Record of Environmental Consideration (REC)**.
- **Environmental Assessment (EA).** An EA is a “concise public document” analyzing the environmental impacts of a federal action. Its primary function is to provide sufficient information for the agency to decide if an Environmental Impact Statement is necessary.

If an Environmental Impact Statement is not necessary, the agency prepares a **Finding of No Significant Impact (FONSI)** for the decisionmaker's signature.

- **Environmental Impact Statement (EIS).** An EIS is “a detailed written statement” concerning the environmental impacts of a major federal action, as required by section 102(2)(C) of NEPA. An EIS circulates initially in a draft version. Other federal agencies, state agencies, and the public review and comment on this draft. Every substantive comment must be addressed, often with changes in the proposed action. The EIS then appears in a final version.

After the final EIS is published, the agency prepares a **Record of Decision (ROD)**, which explains the rationale for the decision. The agency decisionmaker makes the decision when the ROD is signed.

The flowchart on the opposite page summarizes the key milestones in NEPA compliance.



How NEPA documents are prepared

BMDO, like all federal agencies, must comply with NEPA by analyzing the environmental impacts of its proposed actions and alternatives. This analysis will be efficient and legally sufficient if you follow the steps outlined below.

Step 1

Contact the BMDO Environmental Coordinator to discuss the environmental status of your proposed program. You and the BMDO Environmental Coordinator will determine whether NEPA documentation is required.

Make the Environmental Coordinator a partner in your program planning.

A proposed program activity requires no documentation when one of the following is true:

- Prior NEPA documents adequately cover the program activities.
- The program activities are administrative or procedural, thus having no potential for physical or biological effects.

If, after the initial consultation, your program is likely to require NEPA documentation, go to step 2.

Step 2

Provide the BMDO Environmental Coordinator a description of the proposed action.

The BMDO Environmental Coordinator, in consultation with the BMDO General Counsel, will determine which one of the following levels of environmental documentation is required:

- Categorical Exclusion (CATEX) cited in a Record of Environmental Consideration (REC)
- Environmental Assessment (EA) with FONSI
- Environmental Impact Statement (EIS) with ROD

A detailed DOPAA ensures the timely and efficient completion of the EA or EIS.

NEPA costs are budgeted program costs (the cost of doing business), not unanticipated add-ons.

Step 3 As appropriate, arrange with the BMDO Environmental Coordinator to prepare the Record of Environmental Consideration (REC) which documents the Categorical Exclusion. The effort stops there.

Step 4 If an EA or EIS is determined necessary, prepare a Description of Proposed Action and Alternatives (DOPAA).

A DOPAA includes:

- Clearly identified program goals and objectives.
- The purpose and need for the new system or the new technology.
- Statement of the No-Action Alternative. The no-action alternative is necessary to measure the effects of the other alternatives.
- List of all reasonable alternatives. These can include other sites, weapon configurations, technologies, and scheduling options.

Discard alternatives only if they are clearly unreasonable. Document the reasons for discarding alternatives.

Step 5 Coordinate with the BMDO Environmental Coordinator for a determination as to who will prepare the EA or EIS.

As part of step 5, the BMDO Environmental Coordinator will arrange for a government agency or contractor to prepare the EA and the EIS. Such contracting activities also include setting projected contract costs and a proposed schedule.

How NEPA integrates with the acquisition process

NEPA analysis and documentation must be part of every BMDO decision in the acquisition process. Integration of NEPA into the acquisition process will produce these benefits:

- Better and more informed decisions
- Environmentally sound decisions
- Environmental compliance

Annex E of DoD Manual 5000.2 summarizes the plan for integrating NEPA and program planning. The Annex highlights the need to identify and analyze the potential environmental consequences of each alternative being considered.

NEPA and the acquisition process should flow together, according to the following steps:

- Prepare environmental analyses for each milestone decision in the acquisition process. NEPA analysis and accompanying documents are required in the acquisition process from the initial concept development through demonstration and validation, fielding, and decommissioning.
- Prepare the appropriate NEPA documents for each subcomponent of the proposed system.
- Prepare site-specific NEPA documents whenever considering new sites for testing, deployment, or decommissioning.
- Involve the BMDO Environmental Coordinator in the early stages of Concept Development. Any later is too late.
- Involve the Program Manager, the Executing Agent, the Project Integrator, and the Acquisition Executive in every NEPA activity.

How environmental analysis evolves as technology matures

NEPA makes better decisions happen.

During design and development of a system, ongoing environmental analyses parallel decision points in the process. At each point, environmental analysis provides for better decisionmaking.

- **During conceptual development and initial design** of a system, environmental analysis provides a programmatic view of environmental effects of alternatives.
- **During prototyping and testing**, an environmental analysis becomes more focused, helping BMDO decisionmakers choose between competing technologies.
- **Before production**, a more focused environmental analysis can identify and correct potentially significant environmental impacts caused by specific manufacturing activities.
- **Before deployment**, an environmental analysis provides a last site-specific evaluation of the system's operational impacts.
- **After deployment**, an environmental analysis guides any changes in deployment or in maintenance procedures.
- **Prior to decommissioning**, an environmental analysis provides information to eliminate or mitigate impacts.

Analysis at each of these steps provides the decisionmaker with the benefit of informal planning and decisionmaking with environmental considerations.

Alternatives for analysis and decisionmaking

NEPA requires identification and evaluation of all reasonable alternatives, allowing both the decisionmaker and the public to assess the trade-offs within the proposed action. These trade-offs include technological options, budgetary considerations, and environmental concerns.

Sound analysis requires consideration of the impacts of all reasonable alternatives.

Alternatives to a proposed action are at the heart of NEPA. Their development and consideration lets you compare impacts. They sharply define issues. Alternatives provide a clear basis for choice.

Alternatives to the proposed action must:

- Fulfill the purpose and need.
- Address the significant issues.
- Include a "no action" alternative.
- Offer mitigation opportunities.

Development of alternatives gives you a genuine opportunity to select the best way to achieve a goal. You are required to evaluate the environmental impacts of all reasonable alternatives.

Identifying reasonable alternatives

Alternatives to the proposed action are the key to full compliance with NEPA.

Step 1 Identify mission/project objectives. The Project Integrator begins to prepare the Description of the Proposed Action and Alternatives (DOPAA).

Example: The objective of the Lightweight ExoAtmospheric Projectile (LEAP) Test Program is to design, develop, and demonstrate the capability of a miniaturized, lightweight projectile to intercept targets in the exoatmospheric region.

Step 2 Survey all potential engineering and site options.

Example: As part of the LEAP NEPA analysis, BMDO analyzed the following range and booster options.

Range Options

White Sands Missile Range
U.S. Army Kwajalein Atoll
Poker Flat Research Range
Wallops Island

Booster Options

Alcor I
Antares II
Aries I (M56A1)
Aries II (M56A1 & M57A1)
BE 3
Black Brant VC
Castor I
Castor II
Castor IVA
Castor IVB
Sargeant & M57A1
Pegasus (2nd Stage)
Pegasus (2nd & 3rd Stages)
Pegasus (1st Stage)
Stars (Polaris A3 & Orbus I)
Talos & M57A1

Record why some options were rejected.

Step 3 Choose step 2 options that can be combined to make reasonable alternatives.

Example: From the step 2 options, BMDO finally chose to analyze thoroughly only two sites: White Sands Missile Range and Kwajalein Atoll. Final booster options were Aries I and II and Castor IVA. The other sites and booster options were considered but rejected for technical or other reasons.

Other statutory and regulatory requirements to consider

- Clean Air Act
- Safe Drinking Water Act
- Clean Water Act
- National Historic Preservation Act
- Endangered Species Act
- Resource Conservation and Recovery Act (RCRA)
- Toxic Substances Control Act (TSCA)
- Noise Control Act
- Occupational Safety and Health Regulations
- Pollution Prevention Act of 1990
- Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)
- Emergency Planning and Community Right-to-Know Act
- Federal Facilities Compliance Act
- Executive Order 12088: "Federal Compliance with Pollution Control Standards"
- State environmental standards, especially those dealing with air quality, water quality, and hazardous wastes
- Local or county ordinances and permits

NEPA analysis reveals compliance issues related to other environment statutes.

Consider environmental requirements concurrently with project planning, programming, and budgeting.

Non-compliance with these statutes may cause:

- Unforeseen delays to or even cancellation of your program
- Fines or other penalties

Civil and criminal penalties can result from improper environmental management. You have ultimate responsibility to ensure that your programs comply with all environmental requirements.

Who is responsible for NEPA analysis?

Within BMDO

- The **Director** has final approval authority regarding environmental policies, procedures, planning, information, and documentation.
- The **Deputies** review, coordinate, and consider environmental information.
- The **General Manager** provides technical support in development of environmental planning and NEPA documentation.
- The **Director, Test and Evaluation**, has primary management responsibility for coordinating environmental analyses.
- The **Environmental Coordinator** implements and manages the environmental compliance program, including all internal and external coordination and all necessary NEPA documentation.
- The **General Counsel** provides legal review and advice on environmental policies, procedures, planning, and documentation.
- The **External Affairs Directorate** provides liaison between BMDO, Congress, other government entities, and the public.

Within Executing Agents

Under Program Management Agreements (PMAs) the Executing Agents assume a key role in environmental analysis and documentation. BMDO accepts from its Executing Agents environmental compliance strategies that comply with all applicable environmental regulations.

- The **Program Manager and Project Integrators** must ensure that adequate environmental analysis is conducted as directed in the PMA.
- **Executing Agents and their Environmental Coordinators** help BMDO managers provide analysis and documentation, which must comply with either BMDO or the Executing Agents' NEPA guidance.

Who are the participants in NEPA analysis?

As a federal agency, DoD must “make diligent efforts to involve the public in preparing and implementing their NEPA procedures” (CEQ Regulations, Section 1506.6).

The public must be involved.

Specific ways to involve the public in environmental analyses include:

- Conducting public hearings when the proposed action requires an EIS. The BMDO External Affairs Directorate is the lead department when hearings are to be conducted.
- Notifying the public about hearings, public meetings, and the availability of NEPA documents.
- Publishing notices in the *Federal Register* when proposed actions are of national interest.
- Mailing information to interested or potentially affected persons or community organizations.
- Notifying state agencies (or clearinghouses), Native American councils, or other governmental bodies which might be affected or have a desire or legal responsibility to review proposed actions.

These notification steps support the overriding goal of NEPA: “to present the environmental impacts of the proposal and alternatives . . . providing a clear basis for choice among options by the decisionmaker and the public” (CEQ Regulations, Section 1502.14).

What are BMDO's NEPA responsibilities?

<i>Integrate environmental considerations into all activities.</i>	What?	Ensure all program actions are in compliance with NEPA and with other federal, state, and local environmental laws and regulations. This compliance includes program actions of foreign governments, when applicable.
	How?	Coordinate all planned program actions with the BMDO Environmental Coordinator. Provide a complete description of your program actions at the earliest stages of planning.
	Why?	It's the LAW. All federal agencies must comply. The National Environmental Policy Act (NEPA) mandates that all federal agencies comply with its provisions. NEPA requires that all major federal actions significantly affecting the quality of the human environment must be reviewed for their impacts on the environment.
	Who?	BMDO decisionmakers are responsible under NEPA for an adequate environmental analysis. The BMDO Environmental Coordinator is responsible to advise and manage the NEPA compliance effort. The Environmental Coordinator brings the BMDO environmental team together to support your BMDO program. This team is made up of the BMDO General Counsel, BMDO Public Affairs Officer, and BMDO Environmental Coordinator.
	Where?	Every BMDO action and every Executing Agent action is potentially subject to NEPA. Federal funds, federal land, or federal personnel signal that NEPA analysis may be required.
	When?	As early as possible, consider environmental issues. Environmental analysis and program planning and development should be concurrent activities.

Consultation with other environmental regulatory agencies

BMDO must consult with any federal or state agency that has either legal jurisdiction or special expertise on environmental quality issues. (A full list of these agencies and their responsibilities appears in the CEQ Regulations and NEPA Implementation Procedures.)

Specific environmental issues requiring consultation include the following:

- **Potential pollution problems:** Air quality, water quality, waste disposal on land, noise, radiation, and hazardous substances.
- **Energy use:** Electric power, oil and gas, coal, uranium, geo-thermal, solar, wind, and energy conservation.
- **Land use:** Federal land management; coastal areas; environmentally sensitive areas; outdoor recreation; community development; and historic, architectural, and archeological resources.
- **Natural resources management:** Weather modification, marine resources, water resources, watershed protection, vegetative resources, fish, wildlife, non-energy minerals, and natural resources conservation.
- **Properties or cultural sites** possibly eligible for the National Register of Historic Places.
- **Airway easement or airspace** questions.

Appropriate regulatory agencies must be consulted on certain specific resources. The matrix on the following page includes **only a few** of the federal, state, and local agencies and groups BMDO must contact.

Agencies that BMDO must consult

	Air Quality and Airspace	Water Quality	Hazardous Waste	Nuclear	T&E * Species	Archeological
U.S. EPA Environmental Protection Agency	X	X	X	X		
DOE Department of Energy					X	
USFWS Fish and Wildlife Service						X
FAA Federal Aviation Administration	X					
SHPO State Historic Preservation Office						X
State Department of Natural Resources	X	X	X	X		
State Fish and Game					X	
State or County Environmental Office	X	X	X	X		

* Threatened and endangered

Resources required for environmental analysis

Compliance with NEPA is an integral part of good program management. Without NEPA analysis and documentation, BMDO cannot commit resources to testing, development, or systems deployment. To ensure compliance, good program management requires the following as a minimum:

- **Assign sufficient staff for coordination of environmental issues.** As the significance and complexity of the action increases, so does staff time.
- **Budget sufficient funds to cover all required staff time.** Your Program Management Agreement should include funds for contractual efforts to prepare NEPA analysis and documentation.
- **Schedule sufficient time for the NEPA process in your program.** Completion of even a simple EA can take months and cost thousands of dollars, as the following matrix shows.

Document	Time	Estimated Dollars
Categorical Exclusion (CATEX)*	3 to 6 weeks	Up to \$8,000
Environmental Assessment (EA)	4 to 8 months	\$80,000 to \$300,000
Environmental Impact Statement (EIS)	12 to 24 months	\$400,000 to \$3,000,000

*Note: Involved or borderline CATEXs are documented in a Record of Environmental Consideration (REC).

NEPA documents

The National Environmental Policy Act (NEPA) and the associated Council on Environmental Quality (CEQ) Regulations specify a number of documents that BMDO may need to prepare as it moves through the steps in the BMDO NEPA Process. Pages 24 to 38 contain outlines and descriptions of the required contents for the following environmental documents:

- Categorical Exclusion (CATEX)
- Environmental Assessment (EA)
- Finding of No Significant Impact (FONSI)
- Mitigation Plan
- Environmental Impact Statement (EIS)—Draft and Final
- Record of Decision (ROD)
- Administrative Record (Planning Documents)

Categorical Exclusion (CATEX)

CEQ Regulations

1508.4 Categorical exclusion.

"Categorical exclusion" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations (1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. An agency may decide in its procedures or otherwise, to prepare environmental assessments for the reasons stated in 1508.9 even though it is not required to do so. Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect.

Categorical exclusions are actions of such limited extent that no EA and FONSI and no EIS are needed.

Within DoD, every department has prepared a list of projects that ordinarily would be categorically excluded. See the appendix (page 11) of BMDO Directive 6050 for a list of BMDO activities that can be categorically excluded.

Even if the proposed action seems to fit a CATEX category, BMDO must verify that no special circumstances are present. The checklist on the next page is used to verify that an action that might be categorically excluded has no special circumstances invalidating the CATEX designation.

Despite being a NEPA decision, categorical exclusions are not routinely documented in writing. Some agencies argue that categorical exclusions never need written documentation. BMDO suggests documentation of all but the most clear-cut cases in a Record of Environmental Consideration (REC).

For legal purposes, a simple phrase in a memorandum could be sufficient to document that a routine activity is a categorical exclusion.

The decision to consider an action to be a CATEX is still part of the NEPA process.

Screening Checklist for a CATEX

Check a potential BMDO CATEX to see if any of the following conditions are present. If even one of these conditions is present, the action may not be covered as a CATEX. Instead, BMDO would need to prepare an EA.

YES NO

- A "major Federal action . . .?"
- Individual or cumulative effects of potential significance?
- Environmentally controversial change (e.g., different technical viewpoints about the potential effects of the proposed action)?
- Extraordinary circumstances?
- Uncontrolled release of hazardous or toxic materials?
- Use of unproven technology?
- Greater scope than normal for a CATEX category?
- Potential for degradation of a poor or a pristine environment?
- Presence of threatened or endangered species?
- Presence of potential sites for National Register of Historic Places?
- Effects on prime farmlands, coastal zones, aquifers, floodplains, wetlands, wilderness, and wild and scenic rivers?

Environmental Assessment (EA)

CEQ Regulations

1508.9 Environmental assessment.

"Environmental assessment" means a concise public document for which a Federal agency is responsible that serves to:

- (1) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.
- (2) Aid an agency's compliance with the Act when no environmental impact statement is necessary.
- (3) Facilitate preparation of a statement when one is necessary.

Shall include brief discussions of the need for the proposal, of alternatives as required by section 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

An Environmental Assessment (EA) is a brief document leading either to a Finding of No Significant Impact (FONSI) or to the decision to prepare an Environmental Impact Statement (EIS). In other words, the EA is supposed to determine if an EIS is necessary.

The EA guides the agency or department to choose an alternative that best satisfies the agency's mission and accommodates the projected environmental effects.

An EA assesses whether impacts of a proposed action might be significant. If they might be significant, BMDO must prepare an EIS.

As the CEQ Regulations, Section 1508.9 (b), indicate, the EA includes four topics:

- Purpose of and need for the proposal
- Alternatives, as required by section 102(2) (E) [of NEPA]
- Environmental impacts of the proposed action and alternatives
- Listing of agencies and persons consulted

Because the CEQ guidance is so sketchy, many agencies have chosen to expand on the four points. See, for example, the suggested outline for an EIS on pages 33 and 34; this EIS outline is a good starting point if you are working on an EA that is complex enough to require more than a few pages of text.

The FONSI is the key legal document recording that a proposed action (or project) will not have a significant impact on the human environment. The EA and any supporting documents should clearly support such a finding.

Finding Of No Significant Impact (FONSI)

CEQ Regulations

1508.13 Finding of no significant impact.

"Finding of no significant impact" is a document by a Federal agency that briefly presents the reasons why an action, not otherwise excluded (1508.4), will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it (1501.7(a)(5)). If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference.

A FONSI:

1. Briefly summarizes the chosen alternative or proposed action (**who proposes to do what, why, when, how, and where**).
2. States the decision and gives the rationale for the decision, including brief references to the other alternatives if they help make the rationale clear.
3. Summarizes any environmental impacts, especially if they were influential in the selection of the chosen alternative.
Note that a FONSI is legally possible even if the chosen alternative will have some impacts—although ones judged not to be significant.
4. Refers readers of the FONSI to the EA for background information. Such references will normally be to specific pages and sections so a reader can tell what the EA really said:

As the EA indicates (p. 18), only 5 percent of the elk herd will be affected, so impacts on wildlife will not be significant.

5. States when the decision in the FONSI will be implemented.

The decisions in most EAs are implemented immediately. However, under special circumstances, implementation might be delayed (15 to 30 days), as when one of these five conditions is involved: (1) wetlands, (2) floodplains, (3) national defense, (4) when an EA is prepared for a project that would normally require an EIS, and (5) when the project establishes a precedent.

Mitigation Plan

CEQ Regulations

§ 1508.20 Mitigation.

"Mitigation" includes:

- (a) Avoiding the impact altogether by not taking a certain action or parts of an action.
- (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- (c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
- (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- (e) Compensating for the impact by replacing or providing substitute resources or environments.

Mitigation plans adopted by the decisionmakers are commitments that the BMDO makes concurrently with the signing of a Finding of No Significant Impact (FONSI) or a Record of Decision (ROD). A mitigation plan is binding on BMDO or the BMDO Executing Agent despite changes in funding, in agency priorities, or in other policy adjustments. If BMDO fails to implement the mitigation actions in the mitigation plan, the FONSI or the ROD becomes invalid, and legal action could stop the BMDO proposed action.

First, BMDO must commit to the mitigation.

Next, BMDO must be prepared to show that the mitigation, if implemented, would do what it is supposed to do. For instance, changing a missile flight path to avoid critical wildlife habitat may not be 100 percent effective. Any uncertainty about the effectiveness calls the FONSI into legal question and allows for a possible legal challenge.

**A mitigation plan is a binding commitment.
Failure to implement the stated mitigations can stop a project.**

Signing a FONSI contingent on a mitigation plan is risky.

Environmental Impact Statement (EIS)

CEQ Regulations

§ 1502.10 Recommended format [for an EIS].

Agencies shall use a format for environmental impact statements which will encourage good analysis and clear presentation of the alternatives including the proposed action. The following standard format for environmental impact statements should be followed unless the agency determines that there is a compelling reason to do otherwise:

- (a) Cover sheet.
- (b) Summary.
- (c) Table of Contents.
- (d) Purpose of and Need for Action.
- (e) Alternatives Considered Including Proposed Action (secs. 102(2)(C)(iii) and 102(2)(E) of the Act).
- (f) Affected Environment.
- (g) Environmental Consequences (especially sections 102(2)(C)(i), (ii), (iv), and (v) of the Act).
- (h) List of Preparers.
- (i) List of Agencies, Organizations, and Persons to Whom Copies of the Statement Are Sent.
- (j) Index.
- (k) Appendices (if any).

If a different format is used, it shall include paragraphs (a), (b), (c), (h), (i), and (j), of this section and shall include the substance of paragraphs (d), (e), (f), (g), and (k) of this section, as further described in §§ 1502.11-1502.18, in any appropriate format.

CEQ regulations mandate that unless "compelling reasons exist," all EISs should follow the prescribed CEQ organization. For consistency, most EAs, especially longer ones, should also follow the prescribed organization.

The outline on pages 33 to 34 summarizes the CEQ format for an EIS and, in addition, presents several options that CEQ regulations do not directly mention but that will help make an EIS or EA more readable.

An EIS discloses all potential impacts to the decisionmaker and the public. Honest disclosure helps BMDO make good decisions.

"The impact statement itself is not important. The important thing is that proper judgments are made reflecting environmental considerations in the decision process."

—John Dingell, Michigan
Chair, Energy and Commerce Committee of the
House of Representatives

Suggested Outline for an EIS (or EA)

Cover Sheet

Summary

Table of Contents

Chapters I and II constitute an Executive Summary.

Chapter II, Section E, summarizes the content of Chapter IV.

Chapter III and Chapter IV should be parallel in organization.

I. Purpose of and Need for Action

- A. Explain who wants to do what, where, when, how, and why (objectives of the proposed project).
- B. Explain the decision(s) that must be made.
- C. Explain the major issues: soils, water, fisheries, wildlife, etc.
- D. List federal permits, licences, and entitlements necessary to implement the project.
- E. Introduce the EA/EIS.

II. Alternatives Including the Proposed Action

- A. Introduce this section.
- B. Describe the process used to formulate the alternatives.
- C. Describe the alternatives, including the proposed action.
- D. Describe briefly the alternatives eliminated from detailed study and explain why they were eliminated.
- E. Compare the alternatives (summarize the environmental consequences).
- F. Identify your agency's preferred alternative.

III. Affected Environment

- A. Introduce this section.
- B. Describe the project area.
 - 1. Physical components
 - 2. Biological components
 - 3. Economic components
 - 4. Social components

IV. Environmental Consequences (Option A)

- A. Introduce this section.
- B. Describe the effects of the alternatives by resource components:
 - 1. Air
 - (a) Alternative 1 (Proposed Action)
 - (b) Alternative 2 (No Action)
 - (c) Alternative 3 (Short Title)
 - (d) Alternative 4 (Short Title)
 - 2. Soil
 - (a) Alternative 1 (Proposed Action)
 - (b) Alternative 2 (No Action)
 - (c) Alternative 3 (Short Title)
 - (d) Alternative 4 (Short Title)

Option A organizes Chapter IV by resources. Use Option A for EISs and longer EAs (those over 30 pages).

Option B organizes Chapter IV by alternatives. Use Option B for shorter EAs (under 30 pages).

Environmental Consequences (Option B)

- A. Introduce this section.
- B. Describe the probable effects of implementing Alternative A (Proposed Action):
 - 1. Physical components
 - 2. Biological components
 - 3. Economic components
 - 4. Social components
- C. Describe the probable effects of implementing Alternative B (No Action).

V. List of Preparers

VI. List of Agencies, Organizations, and Persons to Whom Copies of the Statement are Sent (For EAs, call this chapter the List of Agencies and Persons Consulted.)

Index

Appendices (if any)

Note: Some other sections can be either one of the appendixes or a separate chapter: Bibliography, Glossary of Terms, and the map package.

Record of Decision (ROD)

CEQ Regulations

1505.2 Record of decision in cases requiring environmental impact statements.

At the time of its decision (1506.10) or, if appropriate, its recommendation to Congress, each agency shall prepare a concise public record of decision. The record, which may be integrated into any other record prepared by the agency, including that required by OMB Circular A-95 (Revised), part I, sections 6 (c) and (d), and part II, section 5(b)(4), shall:

- (a) State what the decision was.
- (b) Identify all alternatives considered by the agency in reaching its decision, specifying the alternative or alternatives which were considered to be environmentally preferable. An agency may discuss preferences among alternatives based on relevant factors including economic and technical considerations and agency statutory missions. An agency shall identify and discuss all such factors including any essential considerations of national policy which were balanced by the agency in making its decision and state how those considerations entered into its decision.
- (c) State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not. A monitoring and enforcement program shall be adopted and summarized where applicable for any mitigation.

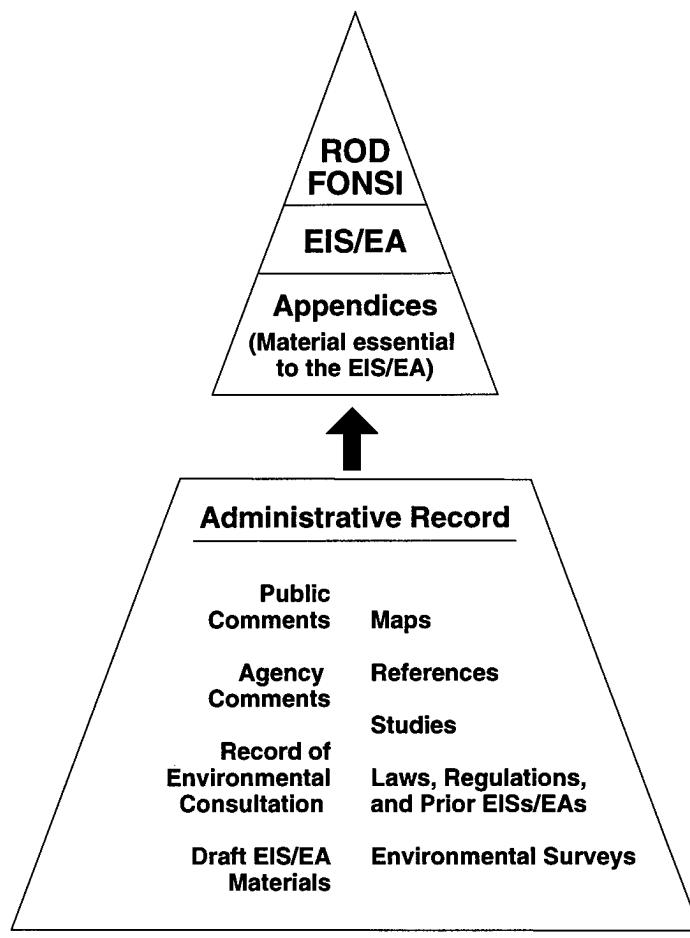
A ROD:

1. Summarizes the preferred or chosen alternative (**who** proposes to do **what, where, when, how, and why**).
2. States the decision and gives a brief rationale for the decision, including, if appropriate, references to other alternatives and to key environmental impacts.
3. Lists and discusses the response of the preferred alternative to key issues, as well as any management priorities (ones beyond those that are obviously environmental, such as economic and social).
4. Lists the alternatives considered (assuming you have not already made these clear earlier in the ROD).
5. States when the decision will be implemented.

Administrative Record (Planning File)

The BMDO administrative record includes all the backup documents supporting an Environmental Impact Statement (EIS), an Environmental Assessment (EA), or a Categorical Exclusion (CATEX). If challenged in court, BMDO would rely on the administrative record to show what the responsible BMDO official considered before signing either a Record of Decision (ROD) or a Finding of No Significant Impact (FONSI).

As the figure below shows, the administrative record includes a variety of documents. To be useful, the administrative record must be both complete and accessible. The administrative record includes material used by the decisionmaker at the time the ROD or FONSI is signed. Material which is subsequently developed is not part of the Administrative Record. In the event of a legal challenge, information prepared after the date of the decisionmaker's signature would mislead the court, possibly prejudicing the legal proceedings.



Documents Relating to the Administration Record.

Preparing the Administrative Record

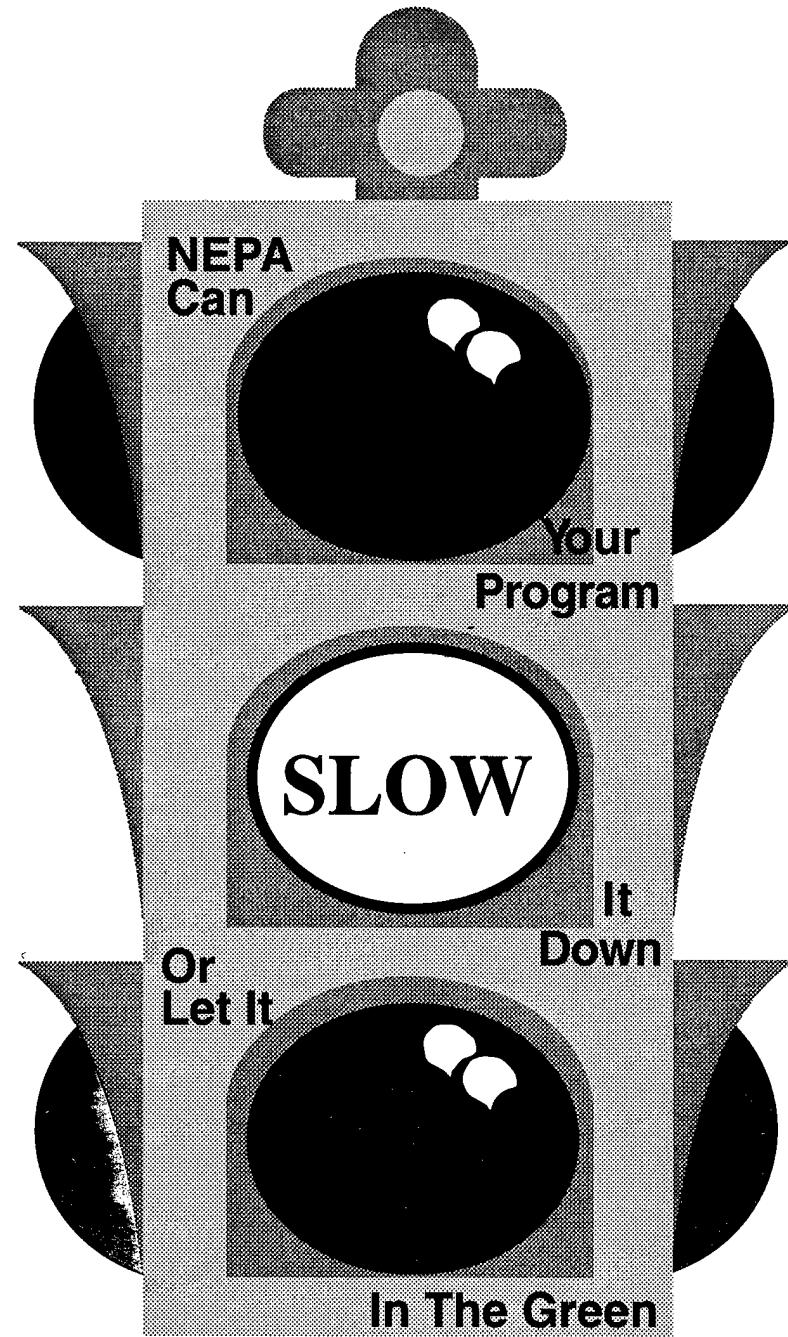
1. Clean, unmarked originals of all documents should be maintained in the administrative record.

Originals should not circulate or leave the file.
2. The following categories of documents should be included in the Administrative Record:
 - Public comments
 - Comments from other agencies or government entities
 - Studies
 - Environmental surveys
 - Prior EISs or EAs
 - Maps
 - Records of consultations
 - Supporting technical information and references to published sources
3. As appropriate, notes should be added to clarify a document's intent or status. If, for example, a computer run reveals a proposed alternative to be economically unfeasible, note this judgment. A sound administrative record helps readers accurately interpret the agency's decisionmaking process.
4. Backup documents that are not part of the official Administrative Record should be retained for agency reference.
5. Classified or other documents that are exempt from Freedom of Information requests should be kept separate using appropriate security procedures. Such documents include proprietary corporate information; location maps of threatened, endangered, or sensitive plants, animals, or fish; internal BMDO briefing papers; and internal BMDO legal advice.
6. The administrative record should be maintained until implementation is finished. For complex BMDO systems, the record may have a legal role, beginning with the initial planning phase and continuing until final decommissioning of a system.

A good administrative record is essential to full and honest legal NEPA disclosure.

Program Manager's Environmental Planning Checklist

- Are my programs environmentally compliant?
- Have I consulted with the BMDO Environmental Coordinator?
- What level of NEPA compliance and documentation is appropriate—CATEX, EA, or EIS?
- Who is responsible for environmental analysis and documentation?
- Has my program planning included environmental analysis?
- Are other laws and regulations, besides NEPA, relevant to my program?
- Are my alternatives for the proposed program reasonable?
- Are mitigations essential elements of the alternatives?
- What provisions have I made to coordinate all proposed activities with other federal, state, or local regulatory entities?



You Need to Know About NEPA...